

# JUDGE E. RICHARD WEBBER

## COURTROOM AND CHAMBERS' PROCEDURES

Chambers and Courtroom are located on 12 South  
of the Thomas F. Eagleton Courthouse  
111 South Tenth Street, St. Louis, MO 63102  
TELE: (314) 244-7460  
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### Chambers' Staff

Betty Ann Bonner, Judicial Assistant  
Alison Esbeck, Law Clerk  
Tarsha Phillibert, Law Clerk  
Gayle Madden, Court Reporter  
Debbie Kriegshauser, Court Reporter

### COURTESY COPIES

Due to Electronic Case Filing, this Court prefers courtesy copies to be provided for Pretrial Compliance, Dispositive Motions and Exhibits over ten pages in length.

### RULE 16 CONFERENCES

After all defendants have answered the complaint, a Rule 16 Conference will be set. The attorney preparing and trying the case must appear for the conference unless permission is granted by this Court for another to appear, either personally or by telephone. Personal appearance is preferred. Any counsel wishing to appear by telephone must notify chambers at least twenty-four (24) hours in advance. The party appearing by telephone must initiate the call. If you believe that the parties are ready for a scheduling conference and one has not been set, please notify the Judicial Assistant for an expedited conference.

### CASE MANAGEMENT ORDERS

The deadlines set forth in the Case Management Orders will be strictly enforced. Modifications will be made only upon a showing of exceptional circumstances.

### DISPOSITIVE MOTIONS

Any motions to dismiss, motions for summary judgment or motions for judgment on the pleadings shall follow the following briefing schedule:

Dispositive Motion filed.  
Briefs in opposition shall be filed within twenty (20) days.  
Reply briefs shall be filed within five (5) days.

### **ALTERNATIVE DISPUTE RESOLUTION**

All civil cases (except Habeas Corpus) will be referred to Alternative Dispute Resolution unless either party convinces this Court that the case may only be decided by a ruling of law, or both parties, for any reason, convince the Court that such a referral would have no useful purpose. Most ADR referrals are for a ninety-day period. Ordinarily, plaintiff's counsel will be designated as lead counsel, who shall work with opposing counsel to select a neutral and notify the court clerk of the agreed neutral, no later than twenty (20) days from the start of referral. If a settlement is reached, this Court shall be notified immediately and parties shall file a Stipulation for Dismissal within thirty (30) days.

### **DISCOVERY MOTIONS**

Hearings on all discovery motions are set by the Court to assure case management deadlines are observed. These hearings are held at the first opportunity following the date when a response to a motion to compel is due. You will receive a Notice of Hearing or be notified by telephone as to the date and time of the hearing. All parties affected by a discovery motion are expected to appear.

### **INFORMAL MATTERS**

Motions for leave to file, for extension of time, and other motions, ordinarily ruled upon by the Court informally, should be filed electronically. This Court will grant or deny these motions on a daily basis. If more information is needed, a hearing will be set and counsel will be notified.

### **PRETRIAL CONFERENCE**

Pretrial Conferences are typically held on Fridays, approximately ten days before trial. These conferences are held in chambers or in the courtroom. At the conclusion of the pretrial conference, the rulings are stated on the record. Parties shall be prepared to discuss any pretrial matters pending before the Court.

For trials in Cape Girardeau or Hannibal, pretrial conferences will be held in St. Louis, unless otherwise specified by this Court.

## **RECOMMENDED COURTROOM PROCEDURE**

### **1. Courtroom Decorum**

Jurors form impressions of the operations of their Courts based upon the performance of the judge, lawyers, and court personnel. Lawyers and persons representing themselves are expected to practice civility at all times in the Courtroom. Jurors have a right to believe that their time will not be wasted. All objections to depositions will be ruled before the jurors report daily, at noon, in the evenings, or after the jurors are excused. Jurors will not be expected to wait in the jury room while counsel and the Court are considering motions or ruling objections.

Counsel and parties may keep cups at table, but containers shall not bear a product name.

### **2. Objections**

Generally, all objections shall be made by counsel from the counsel table or at the podium. At the time an objection is made, counsel (or a person representing himself or herself) must state the lawful basis for the objection without making "speaking" objections. Sidebar conferences are discouraged and should only be requested when a legal basis exists for conferring with the Court and counsel out of the hearing of the jury, or if making the particular objection would inject into the case prejudicial information which should only be discussed at the bench out of the hearing of the jury

### **3. Exhibits**

- a. The parties are expected to confer in advance and stipulate as to admission of all exhibits, unless either party intends at trial to advance a lawful argument in opposition to admission of an exhibit.
- b. No exhibit shall be shown to the jury in opening statements or at any other time until it is received in evidence or the Court has granted permission for the exhibit to be shown to the jury, unless the parties stipulate to its use on the record in advance of its publication for the jury.
- c. Courtrooms are equipped with electronic presentation equipment. Attorneys and parties may call chambers in advance of trial and receive training on the equipment. Attorneys and parties are encouraged to use this equipment, rather than asking that paper exhibits be passed to the jury. In the event an attorney or party elects to pass exhibits to the jury, all written exhibits in

documentary form to be offered into evidence, that will be shown to the jury, must be accompanied by an exact duplicate for each juror.

- d. Plaintiffs (or the Government in criminal cases) shall mark exhibits P-1, P-2, P-3, etc. and the defendants shall mark exhibits D-1, D-2, D-3, etc. movant's shall mark exhibits M-1, M-2, M-3, etc.

4. Jury Instructions

Eighth Circuit Jury Instructions will be used in all cases if available. If instructions from any other source are proffered, they must be accompanied by case authority.

Parties shall submit a "clean" copy and a "dirty" copy of each instruction proffered. A "clean" copy for the jury will reflect only "Instruction No. \_\_\_\_" at the top with no further explanatory comments.

The Government must not proffer jury instructions with the style of the case with case number on the instruction.

## **CIVIL VOIR DIRE**

The Court shall, in all civil cases, ask questions of perspective jurors. Plaintiff is allotted 20 minutes to conduct voir dire. Defendant is allotted 20 minutes to conduct voir dire. Multiple parties will share the time on each side of the case.

### **1. Preliminary**

- a. The standard observed for cause strikes is that the panel member is unable to decide the case based upon the evidence and under the instructions of the Court, or, in unusual cases, where all responses of the panel member indicate the person could not be a fair and impartial juror. The Eighth Circuit Court of Appeals ruled "[t]o challenge a juror for cause, a party must show actual partiality growing out of the nature and circumstances of the case . . . . A district judge is required to strike for cause any juror who is shown to lack impartiality or the appearance of impartiality . . . ." Walzer v. St. Joseph Hosp., \_\_ F.3d \_\_ 8th Cir. 2001. A panel member's response that a particular inquiry would be a "problem" for him or her or that it would be "difficult" is insufficient alone for an excuse for cause.
- b. No individual voir dire questions, except follow-up questions will be permitted, except upon prior Court approval. (Exception in death penalty cases).
- c. It is the Court's preference to grant each party in a civil case additional challenges when excess jurors exist after cause challenges, but only if all parties agree. Excess panel members, in the absence of agreement to take more than three strikes, shall be eliminated randomly and will not be taken from the end of list.
- d. Before the case is called - Counsel must supply the Court with a joint brief statement of facts of the case to be read to panel members during voir dire.

### **2. Court's Questions in Civil Cases**

- a. I will be asking some questions and respective counsel (or party -identify) will be asking some questions of the panel. If you make an affirmative response, please rise and state your name before answering the question.
- b. If giving an answer to any question might embarrass you, please ask to give your answer at the bench and out of the hearing of the other jurors.

- c. You are all qualified jurors. In some cases, because of lifetime experiences, there may be those among you that will be better suited to try this particular case. Because of the remote possibility that some of you may not have answered these questions previously, I shall ask these few qualifying questions:
  - (1) Is any one not a citizen of the United States?
  - (2) Is any one not 18 years old?
  - (3) Is there any one who can not read, write, speak, and understand English?
  - (4) Do any of you believe you currently suffer from a mental or physical disability which would impair your ability to sit as a juror?
  - (5) Do any of you have a charge pending against you or have any of you been convicted of any crime in any state or federal court of record, punishable by imprisonment for more than one year?
- 3. Introduce counsel and have counsel introduce other persons at table.
- 4. Announce style of case and explain nature of the case based upon statements supplied in writing by counsel before case is called.
- 5. Publicity Issues
  - a. Is there anyone in the panel who knows or believes they know anything about the case?
    - (1) Source?
    - (2) Is there anyone who does not understand that it is the duty of a juror to listen to the evidence as it comes from the witness stand and to decide the case only from evidence seen and heard in Court and under the instructions of the Court and set aside anything else you may have seen, heard, or viewed?
    - (3) Is there anyone who cannot do that?
    - (4) Has anyone formed an opinion about the merits of the case before coming to Court or since you arrived in Court today?
    - (5) Is there anyone who cannot set side any opinion about the merits of the case and decide the case only from the evidence seen and heard here in Court and under the instructions of the Court?

- (6) (Optional) Do I understand correctly that everyone can put aside whatever they know or think they know about the case and decide it only from the evidence seen and heard in Court and under the instructions of the Court?
  - b. Inquire if any panel member has any prejudice or bias for or against a case of this type?
  - c. (Optional if excessive force case)
    - (1) Is any panel member related to or a friend of a law enforcement officer?
    - (2) Is there anyone who would give more weight or less weight to the testimony of a law enforcement officer merely because that person is a law enforcement officer or would you give the testimony of a law enforcement officer more or less weight for any reason?
- 6. Witnesses  
Ask each counsel to read names of witnesses.
  - Are any of you related to or acquainted with any of the persons who may be called as a witness?
- 7. Prior Service  
Ask panel members if they have previously served on a jury in:
  - a. civil case;
  - b. criminal case;
  - c. federal or state;
  - d. the length of the case;
  - e. Did the case proceed to verdict?
- 8. Have any of you, your spouse, your child, your mother, father, brother or sister ever been a party to a lawsuit as a plaintiff, defendant, or in any other capacity as a party?
- 9. Inquire of individual jurors:
  - a. Place of residence; and
  - b. Hobbies or employment.
- 10. I shall not indicate my opinion about any of the facts of the case. It is your duty to decide the facts and my duty to rule questions of law. Because of lifetime experiences, television, training, or otherwise, you may have a firm idea of what the law is or should be, so that you would be unwilling to follow the law. Is there anyone who does not understand that it is your duty to follow the law as the Court gives it to you even though

you may disagree with it? Is there anyone on the panel who will not, if selected, follow the law as the court instructs you?

11. Is there anyone who has had any experiences in your life which might influence you, one way or the other in connection with this case that you can think of at this time?
12. Is there anyone who can think of any matter or experience in your life which would prevent you from being a completely fair and impartial juror in this case?
13. Is there anyone who will not, if selected as a juror, return a verdict based solely upon the evidence and the law as the Court gives it to you?
14. Is there anyone who has any any bias or prejudice against a plaintiff coming into Court seeking money damages?
  - Does each of you realize that this is the only method of recompense under our system of law if a plaintiff proves the case to you under the proof standard of proof?
15. Is there anyone who has any quarrel with the proposition that in order for plaintiff to recover, (he)(she)(it) must first prove the case by a preponderance of the evidence or by a greater weight of the evidence?
16. Objections
  - a. Does each person on the panel realize that objections will likely be made and if that occurs, will any of you hold that against the side just because they make an objection?
  - b. Side Bar Procedure - Explain.
17. Questioning by Counsel

20 minutes for each side unless other times are set out in advance.

## **CRIMINAL VOIR DIRE**

The Court shall in all criminal cases ask prepared questions of perspective jurors. The Government is allotted 20 minutes to conduct voir dire. Defendant is allotted 20 minutes to conduct voir dire. (Time limits do not apply to capital cases).

### 1. Preliminary

- a. The standard observed for cause strikes is that the panel member is unable to decide the case based on the evidence and under the instructions of the court, or, in unusual cases, where all responses of the panel member indicate the person could not be a fair and impartial juror. A panel member's response that a particular inquiry would be a "problem" for him or her or that it would be "difficult" is insufficient alone for an excuse for cause.
- b. No individual voir dire questions, except follow-up questions will be permitted, except upon prior Court approval. (Exception in capital cases).
- c. Excess panel members shall be eliminated randomly and will not be taken from end of list.

### 2. Call the Case for Trial

- a. Call case by style and number
- b. Ask if parties ready for trial
  - (1) court clerk calls names of jurors.
  - (2) Swear Panel
  - (3) Explain Voir Dire

### 3. Court's Questions

I will be asking some questions and respective counsel will be asking some questions of the panel under a twenty minute time limitation. If you make an affirmative response, please rise and state your name before answering the question.

If you would prefer to keep your answer private, please ask to give it at the bench out of the hearing of the other jurors.

### 4. Introduce counsel

Ask counsel for the Government to introduce himself or herself and to introduce any other persons at counsel table for the Government.

Ask counsel for the Defendant to introduce himself or herself and to introduce any other persons at counsel table, including Defendant.

5. Purpose of Voir Dire

- a. You are all qualified jurors. In some cases, because of lifetime experiences, there may be those among you that will be better suited to try this particular case.
- b. Qualification questions:
  - (1) Is any one not a citizen of the United States?
  - (2) Is any one not 18 years old?
  - (3) Is there any one who can not read, write, speak, and understand the English language?
  - (4) Do any of you believe you currently suffer from a mental or physical disability which would impair your ability to sit as a juror?
  - (5) Do any of you have a charge pending against you or have any of you been convicted of any crime in any state or federal court of record, punishable by imprisonment for more than one year?
- c. If you see someone that you know who is involved with the trial associating with one side or the other and you become concerned, advise me immediately.

6. Length of Trial

I expect it will take approximately \_\_\_\_ (days) (weeks) to try this case.

- a. Ask if commitment of that time will present any special problems with any jury panel member.

7. Counsel to Supply

The Assistant United States Attorney will now read or summarize indictment of information.

8. Presumptions of Innocence

- a. Is there anyone on the panel who does not understand that a charge is not evidence and simply because a person has been charged is no indication of guilt?
- b. In a criminal trial, the defendant is presumed innocent until proved guilty beyond a reasonable doubt. This presumption remains with a defendant until found guilty by a jury. The obligation is always on the Government to prove the defendant's guilt and there is no obligation for the defendant to prove his innocence. Is there anyone on the panel who disagrees with these principles?

- c. Would any of you find the defendant not guilty even if convinced of his guilt beyond a reasonable doubt solely because you felt sympathy for the defendant?
- d. Does each of you understand that the burden of proof in a criminal case is different than in a civil case? In a criminal case, the Government is required to prove the defendant's guilt beyond a reasonable doubt?
- e. Do each of you understand that the defendant has an absolute right not to testify? Will any of you be more likely to believe that he is guilty if the defendant does not testify?
- f. Does each of you understand that if a defendant does not testify, you may not discuss that in your deliberations?

9. Publicity

(Caution jurors not to say anything about the case that they know or think they know).

- a. Is there anyone who does not understand that it is the duty of a juror selected to try this case to reach a verdict based only from evidence heard in Court and under the instructions of the Court?
- b. Is there anyone on this panel who could not, for any reason, set aside what you have heard or believe you have heard and decide the case only from the evidence and under the instructions of the Court?
- c. Have any of you read any material about this case in the newspaper or any other publication?
- d. Have any of you listened to any account of the case on the television, radio, computer monitor, or on any other electronic media? When?
- e. Have any of you talked to anyone about the case? If so, who, when and where?
- f. Have any of you received any information from any source about the case? If so, from whom?
- g. (Private Voir Dire) - Have you formed an opinion about the case? If so, could you set aside that opinion and decide the case solely from the evidence and under the Court's instruction?

10. Location of Crime Scene (Optional)
- a. Are any of you familiar with (state address or location of crime scene).
  - b. Is there anything about your familiarity with that location which would make it difficult for you to sit as a juror in this case.
11. Names of Witnesses
- a. Lawyers in this case have supplied the names of individuals they may call as witnesses. Read list. Is there anyone on the panel who knows or believe they know any of those individuals named? The names of defendants witnesses will be mixed with the Government's witnesses so the Defendant will not be required to state which witnesses will be called.
  - b. If so, state the nature of your relationship to that individual.
  - c. Has any panel member had any business or social dealings with any of the potential witnesses?
12. Law Enforcement
- Does any panel member or any member of the panel member's immediate family have a relative or close friend that is employed by a law enforcement agency?  
If so, would that employment or relationship cause you to give either more weight or less weight to the testimony of a law enforcement officer testifying in this case simply because that other person is a law enforcement officer or would you give the testimony of a law enforcement officer more or less weight for any reason?
13. Prior Juror Service - Organizations/Memberships
- a. Have any of you ever served as a juror in a criminal or civil case in either federal or state court?
    - (1) Did the jury you served on reach a verdict?
    - (2) How long did the case last?
    - (3) Was there anything about that service that might interfere in your ability to come to a fair decision in this case?
  - b. (Optional) Have any of you ever served as a grand juror in either federal or state court? If so,
    - (1) How long did you serve?
    - (2) Was it state or federal court?
    - (3) Was there anything about that service that might interfere in your ability to come to a fair decision in this case?

- c. (Optional) Does any member belong to the Fully Informed Jury Association, Jury Nullification Organization, or any similar group or organization?
- d. (Optional) Does any member belong to any group which believes that the United State's government is not lawfully instituted?
- e. Do any of you hold any religious, moral, ethical or other beliefs which would prevent you from determining the legal guilt or innocence of this defendant?

14. Status

- a. Victims: (African-American) (Optional)
  - (1) Is there anyone on the panel who believes that African-American victims are treated unfairly by the criminal justice system?
  - (2) Would your opinion affect your ability to be a fair and impartial juror in this case?
- Victims: (Caucasian) (Optional)
  - (1) Is there anyone on the panel who believes that Caucasian victims are treated unfairly by the criminal justice system?
  - (2) Would your opinion affect your ability to be a fair and impartial juror in this case?
- b. (Optional) The Defendant in this matter is (a)(an) (young) African-American (male)(female).
  - (1) Is there anyone on the panel who believes that African-American males/females are treated unfairly by the criminal justice system?
  - (2) Would your opinion affect your ability to be a fair and impartial juror in this case?

15. Prior Criminal Record

- a. Have any of you, or a close friend or relative, ever been arrested for or charged with a crime or placed on probation in state or federal court where the punishment was one year or more?
  - (1) What was the crime?
  - (2) (Optional) In your opinion were you (was this person) treated fairly by the criminal justice system including: the police, the prosecuting attorney, the judge, the person's defense attorney, corrections officers, probation and parole officers?
  - (3) (Optional) How have these experiences affected your view of the criminal justice system?

- (4) (Optional) Have any of you ever visited or corresponded with or spoken with any individual while that person was incarcerated in jail, a penitentiary or other penal facility?
  - (A) Identify person.
  - (B) What were the circumstances?
  - (C) How have these experiences affected your view of the criminal justice system?
- (5) (Optional) Have any of you, or a close friend or relative, had a negative experience with a law enforcement official? Identify facts.
- (6) (Optional) Based on these experiences, what is your opinion of the credibility of police officers or other law enforcement officials?

16. Crime Victim

- a. Have any of you, or a close friend or relative, been the victim of a crime?
  - (1) Is there anything about that matter that would prevent you from being completely fair and impartial in this case?
  - (2) (Optional) Did this crime involve the use of violence?
  - (3) (Optional) How?
  - (4) (Optional) Did the police apprehend the suspect?
  - (5) (Optional) In your opinion, was there a satisfactory result with respect to that matter?
  - (6) (Optional) How has that experience affected your opinion of the criminal justice system?

17. Relationships

- a. Do any of you know any of the attorneys or do any of you know any other juror?

Concluding Questions

- 18. I shall not indicate my opinion about the facts of this case. It is the juror's duty to decide the facts and a judge's duty to rule questions of law. Is there any one on the panel who does not understand that it is your duty if you are selected as a juror to follow the law as the Court gives it to you even though you may disagree with the law or find the law repugnant or unpleasant to apply as the Court states it exists?

19. Is there anyone who can think of any matter or experience in their lives which would prevent them from being a completely fair and impartial juror in this case?
20. Does each of you realize that objections will likely be made and if there are objections, would you hold that against the side that makes them?
21. Will any juror find it objectionable if an attorney requests a bench conference?
22. Is there any member of the panel who could not, for any reason, listen carefully to all of the evidence and not make up his or her mind prematurely about the case until all of the evidence has been seen and heard and the instructions of the Court have been given?
23. Is there any member of the panel who, for any reason, whether I have asked the question or not, feels that he or she would not want a person listening to his or her case with the same feelings about the case that the particular panel member has at this time?
24. Is there any member on the panel who, for any reason, whether I have asked the question or not, believes that he or she could not, for any reason, listen to the evidence, decide the facts in a fair, unbiased and impartial manner, listen to the instructions of the Court, and return a fair verdict?
25. Ask each re: Name, City, Hobbies, and Employment.
26. Counsel for the Government will now ask you some questions. (A time limit has been imposed by the Court so that the questioning of respective counsel will be conducted according to time constraints). Counsel for the Government may not proceed.
27. Counsel for the Defendant will now ask you some questions. (As with the Government, a time constraint has been placed upon counsel for Defendant). Counsel for Defendant may now proceed.

28. Jencks Act Material

All Jencks Act materials shall be provided to counsel for defendant, or to defendant if he or she is representing himself or herself, at least on the preceding evening before a witness is called, unless the Court rules to the contrary.